IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(HMA) No. 10 of 2003.

Judgement reserved on: 28.6.2007.

Date of decision: July 9, 2007.

Mrs. Anu Sareen ….. Appellant.

Vs.

Sachin Sareen …. Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellants : Mr. Rajiv Jiwan, Advocate.

For the Respondent : Ms. Anu Tuli Azta, Advocate.

Kuldip Singh, Judge.

This appeal has been filed by wife against judgement and decree, dated 16.12.2002, passed by learned District Judge, Kangra at Dharamshala in HMA No. 10 of 2002. The parties are referred in the same manner, as in the impugned judgement and decree.

2. The brief facts are that husband Sachin Sareen, filed a petition under Section 13(1) (ia), (ib) of the Hindu Marriage Act (for short, the Act), against the wife Smt. Anu Sareen, respondent on the grounds of desertion and cruelty. The wife contested the petition and

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

filed reply. The allegations made in the petition and its response in the reply filed by the wife are not relevant for deciding the present appeal, therefore, their details are not being referred here.

3. On 11.11.2002, the petition was fixed for 13.12.2002, for conciliation. On 13.12.2002, the husband, wife with their counsel were present in the court at the time of conciliation and as per order dated 13.12.2002, some articles and gold ornaments were handed over by the husband to the wife and he further agreed to pay a sum of Rs. 35,000/- to the wife for certain articles, which he did not bring on that date in the court. The statements of the parties were recorded and the case was fixed for 16.12.2002 for filing an application by the parties to treat the petition, under Section 13(B) of the Act.

4. On 16.12.2002, the parties appeared in the court alongwith their counsel. The husband filed an application, dated 13.12.2002, for treating the petition, under Section 13 (1) (b) of the Act to that under Section 13 (B) of the Act, but wife refused to sign the said application. The learned District Judge took the view that on 13.12.2002, at the time of conciliation, the wife admitted that since 1999, she has left the husband and leaving separately and therefore, the learned District Judge took that statement as admission of wife that she has deserted the husband and passed the decree of divorce, dissolving the marriage of the parties, vide impugned judgement and decree, which has been assailed by the wife in this court by way of appeal.

5. The application, dated 13.12.2002, is signed by the husband and his counsel only and not by the wife and her counsel.

The wife in her statement, dated 13.12.2002, has nowhere stated that she admits the claim of the husband of desertion or cruelty nor she has stated that for allowing the petition of the husband, she has no objection. In that statement, at one place, she has said that since 1999, she is living separately from her husband. The separate living can be due to any reason and not by way of desertion only. There was no application before the learned District Judge of the parties, under Section 13(B) of the Act, for granting decree of divorce by way of mutual consent, nor there was joint application of the parties to treat the earlier divorce petition as a petition, under Section 13(B) of the Act. In absence of that material, the petition filed by the husband could not be treated as petition, under Section 13(B) of the Act, for granting divorce by way of mutual consent.

6. In the petition, the issues were not framed. The case was fixed for conciliation and at that stage, wife made some statement noticed above. The perusal of her statement made on 13.12.2002, would show that she nowhere admitted the claim of the husband that she has deserted the husband or treated him with cruelty. The learned District Judge has erred in granting decree of divorce on the basis of statement of the wife, dated 13.12.2002, which is not her admission with respect to the claim of the husband.

7. In view of above discussion, the impugned judgement and decree are set-aside. The case is remanded to learned District Judge, Kangra at Dharamshala to decide the petition in accordance with law. It has been submitted by Ms. Anu Tuli Azta, Advocate, representing the husband that some time may be fixed before

learned District Judge to dispose of the petition, which is not opposed. The learned District Judge shall decide the petition expeditiously and preferably by 31.7.2008.

8. The parties, through their counsel are directed to appear before the learned District Judge on ***31st July, 2007.*** The Registry is directed to transmit the record of the learned District Judge, Dharamshala, so as to reach that Court before the date fixed.

July 9, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**